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A-70132-1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:

Martin Clive-Smith, et al.

Serial No. 10/726,763

Filed: December 2, 2003

For: ADJUSTABLE POST FOR
CONTAINER

Examiner: Harry A. Grosso

Group Art Unit: 3781

Confirmation No. 4195

April 26, 2007

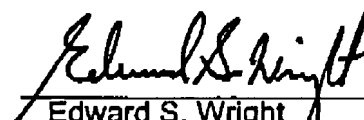

TRANSMITTAL OF BRIEF ON APPEALCommissioner for Patents
P.O. Box 1450
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Sir:

Transmitted herewith is applicant's Brief on Appeal in this matter.

The Commissioner is authorized to charge any fees required in this matter, including extension fees, to Deposit Account 50-2975, Order No. A-70132-1. The applicant is still claiming small entity status.

Respectfully submitted,


Edward S. Wright
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EDWARD S. WRIGHT

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BRIEF ON APPEAL

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REAL PARTIES IN INTEREST

The real parties in interest are the applicants and inventors, Martin Clive-Smith and Christopher John Jones.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

The application was filed as a division of Serial No. 09/743,777, now U.S. Patent 6,655,300, with Claims 1 - 19. Claims 3 - 6, 10 and 12 -14 were cancelled prior to calculation of the filing fee. In a preliminary amendment filed April 6, 20004, Claims 1 - 2, 7 - 9, 11, and 15 - 19 were cancelled, and Claims 20 - 38 were added. In an amendment filed September 7, 2006, Claims 20, 21, 23, 24, 26, 28, 32, 33, 35 and 36 were amended, and Claims 25 and 37 were cancelled. Claim 33 was further amended in amendments after final action filed February 26 and March 27, 2007. Claims 23 and 33 stand allowed, and Claims 20 - 22, 24, 26 - 32, 34 - 36, and 38 are on appeal.

STATUS OF AMENDMENTS

The amendment filed February 26 and March 27, 2007 were filed since the action from which the appeal is taken, and both of those amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The claims on appeal are directed to a support post of adjustable length which is particularly suitable for use in cargo containers.

As defined by Claim 1, illustrated in Figures 16A - 16C of the drawings, and described at Page 33, line 24 to Page 34, line 9 of the specification, the support post 120 has first and second post elements 121, 122 which can be moved axially of each other and have detent openings 123 with opposing flat surfaces that are aligned with each other when the post elements are in predetermined indexed positions, and a detent 125 having flat face bearing surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings 123 in the post elements 121, 122 to hold the post elements in the indexed positions for both lifting and stacking loads.

Independent Claim 35 is directed to a post of adjustable length for supporting both lifting and stacking loads on a freight container. It defines the post as comprising a pair

relatively movable post elements 121, 122 having index openings 123 with opposing flat sides therein, and a detent 125 having opposing flat surfaces engagable with the flat sides of the openings 123 to retain the post elements 121, 122 in a predetermined position. See Figures 16A - 16C and Page 33, line 24 to Page 34, line 9.

Independent Claim 36 is likewise directed to a post of adjustable length for supporting both lifting and stacking loads on a freight container. It defines the post 120 as comprising a first section 122 mounted in a fixed position relative to a base 145 (Figs. 17A, 17B), a second section 121 which is axially extensible relative to the first section, apertures 123 in the first and second sections with opposing flat surfaces for indexed mutual alignment when the second section 121 is extended or retracted to predetermined positions, and a detent plate 125 having opposing flat surfaces for insertion into the apertures 123 to locate and retain sections 121, 122 in a predetermined position relative to each other. See Figures 16A - 16C, 17A, 17B, Page 33, line 24 to Page 34, line 9, and Page 35, lines 5 - 8.

Independent Claim 38 is directed to a support post for a container. It defines the post as comprising an upstanding first section 121 mounted in a fixed position, a second section 122 which is axially extensible relative to the first section, laterally extending rectangular openings 123 in the two sections which are aligned with each other when the second section is extended to a predetermined position, and a relatively flat detent pin 125 of rectangular cross section which can be inserted into the aligned openings to hold the second section in the predetermined position. See Figures 16A - 16C and Page 33, line 24 to Page 34, line 9.

GROUND OF REJECTION

Claims 20 - 22, 24, 26 - 28, 31, 34 - 36 and 38 have been rejected under 35 U.S.C. §103 as being unpatentable over Betjemann (U.S. 3,459,326) in view of Wakano (U.S. 5,388,532).

Claims 20 - 22, 24, 26 - 29, 32, 34 - 36 and 38 have been rejected under 35 U.S.C. §103 as being unpatentable over Betjemann (U.S. 3,386,600) in view of Wakano.

Claims 30 and 31 have been rejected under 35 U.S.C. §103 as being unpatentable over Betjemann '600 and Wakano in view of Saunders (U.S. 4,144,984).

ARGUMENT

Claims 20 - 22, 24, 26 - 28, 31, 34 - 36 and 38

Claims 20 - 22, 24, 26 - 28, 31, 34 - 36 and 38 have been rejected under 35 U.S.C. §103 as being unpatentable over Betjemann (U.S. 3,459,326) in view of Wakano (U.S. 5,388,532).

Claim 20 is directed to a support post of adjustable length having first and second axially movable post elements with detent openings with opposing flat surfaces, and a detent having flat face bearing surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings in the post elements to hold the post elements in predetermined positions for both lifting and stacking loads. The references do not disclose or suggest an adjustable support post having detent openings with opposing flat surfaces and a detent having flat bearing surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings to hold the post elements in different positions for both lifting and stacking loads.

Betjemann is relied upon as showing a support post of adjustable length with detent openings and a detent to hold the post elements in predetermined positions for both lifting and stacking loads. However the elements characterized by the Examiner as "detents" (bolts 34, 35) are round, and they do not have opposing flat surfaces.

Wakano is relied upon as disclosing a support post of adjustable length with a detent in the form of a flat plate which inserted into openings with opposing flat surfaces for holding the post elements in indexed positions. This characterization of Wakano is somewhat misleading because the L-shaped plates (54, 74) characterized by the Examiner as "detents" do not pass through aligned openings in the two post elements. Instead, they are slid into horizontal grooves (53) in the inner side walls of open front stanchion supports (5, 7), and the lower end of stanchions (6, 10) rest upon them. There are no slots in the stanchions, and if a lifting load were applied to the stanchions, they would be pulled out of their supports.

There is no motivation whatsoever for using the L-shaped support plates of Wakano in the post shown Betjemann. They are not detents, but merely adjustable support plates upon which the lower ends of the stanchions rest. If such plates were incorporated into Betjemann, the upper post sections (11A - 14A) would simply rest upon them.

There is likewise no basis for the Examiner's suggestion that it would have been obvious to use a detent and openings with flat sides to spread stacking and lifting loads over a larger cross section of the post elements. Nothing in either reference even remotely suggests the use of detents and detent openings with opposing flat surfaces for that purpose. The motivation for that comes solely from applicant's own disclosure and claims.

Claim 20 distinguishes over the references in calling for axially movable post elements with detent openings having opposing flat surfaces, and a detent having flat face bearing surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings in the post elements to hold the post elements in predetermined positions for both lifting and stacking loads.

Claims 21, 22, 24, 26 - 28, 31, and 34 all depend from Claim 20 and are directed to patentable subject matter for the same reasons as their parent claim.

With regard to Claims 27, 28, 31 and 34, it should also be noted that Claims 27 - 34 are directed to a container having support posts as in Claim 20, but neither Betjemann nor Wakano is concerned with a container. The device shown in Betjemann is an open gondola for uncrated cargo such as Jeeps, ambulances and other vehicles, machinery, and steel stock, as well as small container units (Betjemann, Col. 1, lines 42 - 47), and Betjemann goes to considerable length to distinguish between a gondola and a container (see Col. 1, line 59 to Col. 2, line 31). The device shown in Wakano is a pallet. Hence, in addition to failing to teach the use of flat detents and openings in a post of adjustable length, the references also fail to teach the use of such posts in a container.

Claim 35 is directed to a post of adjustable length for supporting both lifting and stacking loads on a freight container, and it distinguishes over the references in calling for a pair relatively movable post elements having index openings with opposing flat sides therein, and a detent having opposing flat surfaces engagable with the flat sides of the openings to retain the post elements in a predetermined position. As discussed above, the use of a detent opening and a detent with opposing flat sides or surfaces in an adjustable post for supporting both lifting and stacking loads is neither found in, nor remotely suggested by the references.

Claim 36 is directed to a support post having a first section mounted in a fixed position relative to a base and a second section which is axially extensible relative to the first section, and it distinguishes over the references in calling for apertures in the first and

second sections with opposing flat surfaces for indexed mutual alignment when the second section is extended or retracted to predetermined positions, and a detent plate having opposing flat surfaces for insertion into the apertures to locate and retain sections in a predetermined position relative to each other. The references do not even remotely suggest apertures with opposing flat surfaces which are aligned with each other when one post section is in predetermined positions relative to the other, and a detent plate having opposing flat surfaces for insertion into the apertures.

Claim 38 is directed to a support post for a container having an upstanding first section mounted in a fixed position and a second section which is axially extensible relative to the first section, and it distinguishes over the references in calling for laterally extending rectangular openings in the two sections which are aligned with each other when the second section is extended to a predetermined position, and a relatively flat detent pin of rectangular cross section which can be inserted into the aligned openings to hold the second section in the predetermined position. The references, taken alone or together, do not teach or suggest laterally extending rectangular openings which are aligned with each other when the one post section is extended to a predetermined position relative to another, and a relatively flat detent pin of rectangular cross section which can be inserted into the aligned openings to hold the second section in the predetermined position.

Claims 20 - 22, 24, 26 - 29, 32, 34 - 36 and 38

Claims 20 - 22, 24, 26 - 29, 32, 34 - 36 and 38 have been rejected under 35 U.S.C. §103 as being unpatentable over Betjemann (U.S. 3,386,600) in view of Wakano.

This rejection is essentially the same as the one discussed above, with one Betjemann patent being substituted for another. As in Betjemann '326, the element characterized by the Examiner as a detent in the '600 patent (bolt 34) has no flat surfaces. It is round.

Independent Claims 20, 35, 36 and 38 distinguish over Betjemann '600 and Wakano for the same reasons they distinguish over Betjemann' 326 and Wakano.

Claims 21 - 22, 24, 26 - 29, 32, and 34 depend from Claim 20 and are directed to patentable subject matter for the same reasons as their parent claim.

Claims 30 and 31

Claims 30 and 31 have been rejected under 35 U.S.C. §103 as being unpatentable over Betjemann '600 and Wakano in view of Saunders (U.S. 4,144,984).

Claims 30 and 31 depend from Claim 20 and are directed to patentable subject matter for the same reasons as their parent claim.

In addition, Claim 30 further distinguishes in that it is directed to a container having support posts as in Claim 20, with discrete movable header portions individually mounted upon respective ones of the support posts and together spanning between the posts.

Claim 31 is likewise directed to a container having support posts as in Claim 20, and it further distinguishes in calling for discrete header portions mounted on the support posts cooperatively disposed as movable end gates or doors.

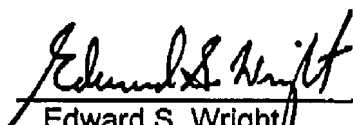
Betjemann '600 and Wakano are discussed above, and Saunders is cited as showing a container with discrete movable headers mounted to support posts and movable as end gates. That container has side walls or panels 17, an end wall or panel 20, and an open top, and is adapted to be stacked together with a similar container in an inverted position to form a closed container. This is an entirely different type of structure than the gondola or Betjemann '600 and the pallet of Wakano, and there is no basis or reason for combining selected elements of the two as the Examiner has suggested. Likewise, there is no motivation for using adjustable posts in the containers of Saunders, which are of fixed height, and doing so would require substantial modification and totally alter the character of those containers.

The examiner suggests that it would have been obvious to incorporate the gates of Saunders into the "container disclosed by Betjemann '600 and Wakano" to provide an easy means of accessing the container deck from the end of the container without having to remove the end gate completely from the container. That argument is flawed. Like the first Betjemann patent, neither Betjemann '600 nor Wakano discloses a container. The device in Betjemann '600 is another open gondola, and the device in Wakano is a pallet. There is no reason to put movable headers or doors on either of them. The decks are fully accessible as shown.

SUMMARY AND CONCLUSION

It is respectfully submitted that the rejections which the Examiner has made cannot be sustained and that the action of the Examiner should be reversed.

Respectfully submitted,


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CLAIMS APPENDIX

The Claims on Appeal

20. A support post of adjustable length, comprising first and second post elements which can be moved axially of each other and have detent openings with opposing flat surfaces that are aligned with each other when the post elements are in predetermined indexed positions, and a detent having flat face bearing surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings in the post elements to hold the post elements in the indexed positions for both lifting and stacking loads.

21. The support post of Claim 20 wherein the bearing surfaces of the detent correspond in size to a substantial portion of the cross section of the post.

22. The support post of Claim 20 further including a transverse rail affixed to the first post element, with the detent being connected to an operating element which is movable relative to the rail.

24. The support post of Claim 20 wherein the detent comprises a pin which can be inserted into and removed from the aligned detent openings.

26. The support post of Claim 20 wherein the detent comprises a flat plate.

27. A container having support posts as in Claim 20 wherein the posts are retractable to reduce the cross section of the container to a size which can pass through an opening of limited dimension.

28. A container having support posts as in Claim 20 with a cross-sectional profile which can be adapted to fit through passages of limited dimension by adjusting the span of the support posts.

29. A container having support posts as in Claim 20, with a header of deep cross section between posts configured as a beam, barrier, wall, gate or door.

30. A container having support posts as in Claim 20, with discrete movable header portions individually mounted upon respective ones of the support posts and together spanning between the posts.

31. A container having support posts as in Claim 20, with discrete header portions mounted on the support posts cooperatively disposed as movable end gates or doors.

32. A container with support posts as in Claim 20 extending from a deck, with a gate suspended from one of the posts, and bracing between the post from which the gate is suspended and the deck.

34. A container having a plurality of the support posts of Claim 20 extending in an upward direction from a platform deck, with capture and handling fittings at the upper ends of the posts, a transverse header beam between posts on opposite sides of the deck, with the lengths of the posts being adjustable to present the capture and handling fittings for access above the header.

35. A post of adjustable length for supporting both lifting and stacking loads on a freight container, comprising a pair relatively movable post elements having index openings with opposing flat sides therein, and a detent having opposing flat surfaces engagable with the flat sides of the openings to retain the post elements in a predetermined position.

36. A support post, comprising a first section mounted in a fixed position relative to a base, a second section which is axially extensible relative to the first section, apertures in the first and second sections with opposing flat surfaces for indexed mutual alignment when the second section is extended or retracted to predetermined positions, and a detent plate having opposing flat surfaces for insertion into the apertures to locate and retain sections in a predetermined position relative to each other.

38. A support post for a container, comprising an upstanding first section mounted in a fixed position, a second section which is axially extensible relative to the first section, laterally extending rectangular openings in the two sections which are aligned with each other when the second section is extended to a predetermined position, and a relatively flat detent pin of rectangular cross section which can be inserted into the aligned openings to hold the second section in the predetermined position.

EVIDENCE APPENDIX
Copies of Evidence Submitted

None

DECISIONS APPENDIX
Copies of Decisions in Related Appeals and Interferences

None